



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 28, 2016

Elizabeth G. Pianca
Lead Deputy County Counsel
County of Santa Clara
70 West Hedding Street
East Wing, 9th Floor
San Jose, CA 95110

Re: Your Request for Advice
Our File No. A-16-034

Dear Ms. Pianca:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

Does the Act's prohibit you from advising the County of Santa Clara on Stanford University's application to build 1,450 university housing units approximately 3 miles from your home?

CONCLUSION

No. The County's decision about the Stanford housing project seems unlikely to have a foreseeable material effect on your property interest in your home. Barring additional facts, you may participate in the County's decisions concerning the university housing project.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are the Lead Deputy County Counsel for the County of Santa Clara ("County"). You own and live in a home located in the neighboring City of Palo Alto. The County is home to Stanford University, with approximately 50 percent of the university's campus located within its jurisdiction. As Lead Deputy, you have been assigned to advise the County on Stanford's application to construct an additional four-building graduate student residential complex, consisting of 1,450 units, in Escondido Village ("EV"), an enclave of graduate student residences located along the Serra Street and Campus Drive frontages of EV. EV is approximately three miles from your home.

Under a 2000 agreement with the County, known as the General Use Permit ("GUP"), Stanford is authorized to construct a total of 3,018 university housing units, with additional housing subject to County approval; the university may also request to reallocate previously approved housing to other locations. In its application pending before the County, Stanford now seeks to:

- Reallocate the remaining 566 housing units under the GUP to the East Campus;
- Add an additional 1,450 additional housing units (approximately 2,400 beds) to the East Campus, beyond the 3,018 pursuant to the GUP; and
- Remove 600 existing surface parking spaces and construct a 1,300-space underground parking facility (700 net new parking spaces).

The primary access route to the new EV graduate housing will be via Serra Street roughly mid-way between Campus Drive and El Camino Real. A January 2016 traffic impact study found the project would not result in any significant traffic impacts on intersections around EV. Specially, the study found that at the intersections closest to the project site, there would be a net decrease in peak-hour traffic to and from affected areas of campus, and a moderate increase in A.M. outbound travel from campus.

ANALYSIS

Section 87100 of the Act prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision if it is *reasonably foreseeable* that the decision will have a *material financial effect* on one or more of the official's interests. (Section 87103.)

Your real property interest in your residence is a financial interest that could give rise to a conflict of interest within the meaning of the Act, since it is a direct interest in real property of \$2,000 or more. (Section 87103(b).) Therefore, to determine whether you have a conflict of interest under the Act with respect to the County's decisions about the EV project, we must determine whether approval or denial of the project would have a *foreseeable and material* effect on your real property interest in your home. (Section 87103.)

Regulation 18701 provides two different standards for determining foreseeability, depending on whether an official's interest is explicitly involved in the decision. In this case, you are not named party in the Stanford proposal, nor would its approval involve you contracting with

the County or receiving a permit or some other entitlement. Your real property interest in your residence is therefore not explicitly involved in the County's decisions about Stanford's proposed EV project. (Regulation 18701(a).) Where an official's interest is not explicitly involved in a governmental decision, we have found that the effect of the decision "[. . .] need not be likely to be considered reasonably foreseeable," but rather, the project's effect on the official's finances must be "[. . .] a realistic possibility and *more than hypothetical or theoretical* [. . .]." (Regulation 18701(b), emphasis added.)

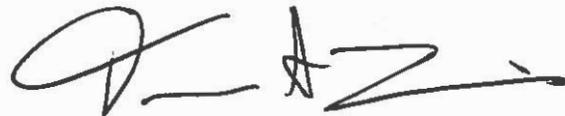
However, your residence is approximately three miles driving distance from the nearest boundaries of the EV project. Moreover, the housing units are consistent with the Stanford's current use of the property and traffic concerns with the student housing appear to be minimal and limited to the intersections around EV. Based upon these facts, your property is not within the vicinity in which an affect would be foreseeable. Because it is not foreseeable that the project could have an effect on the value of your real property interest in your residence, we do not address the remainder of the analysis.

For the foregoing reasons, we find that Act does not prohibit you from participating in the County's decisions about Stanford's EV proposal.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

A handwritten signature in black ink, appearing to read 'Toren A. Lewis', written over a horizontal line.

By: Toren A. Lewis
Counsel, Legal Division

TAL:jgl